

05-11-2001



101713062

PATENT

RECORDATION FORM COVER SHEET
PATENTS ONLY

TO: The Commissioner of Patents and Trademarks : Please record the attached original document(s) or copy(ies).

Submission Type 5-7-01

New

Resubmission (Non- Recordation)

Document ID # _____

Correction of PTO Error

Reel # _____ Frame # _____

Corrective Document

Reel # _____ Frame # _____

Attorney Docket No: 004868.P003

Conveyance Type

Assignment Security Agreement

License Change of Name

Merger Other _____

U.S. Government
(For Use ONLY by U.S. Government Agencies)

Departmental File Secret File

Conveying Party (ies) Mark if additional names of conveying parties attached

Name (1st party) Clarity Systems Execution Date 03212000
Month Day Year

Name (2nd party) _____

Name (3rd party) _____

Name (4th party) _____

Receiving Party Mark if additional names of receiving parties attached

Name (line 1) Alakai Technologies, Inc. If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 2) A Corporation of California

Address (line 1) 2483 East Bayshore Road

Address (line 2) Suite 103

Address (line 3) Palo Alto California 94303
City State/Country Zip Code

Domestic Representative Name and Address Enter for the first Receiving Party only.
(Complete only if receiving party is not domiciled in the United States)

Name _____

Address (line 1) _____

Address (line 2) _____

Address (line 3) _____

Address (line 4) _____

05/11/2001 GT0N11 00000002 09344182 FOR OFFICE USE ONLY

01 FC:581 40.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Correspondent Name and Address

Area Code and Telephone Number 408-720-8300

Name Jordan M. Becker

Address (line 1) BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Address (line 2) 12400 Wilshire Boulevard

Address (line 3) Seventh Floor

Address (line 4) Los Angeles, California 90025

Pages Enter the total number of pages of the attached conveyance document. # 14

Application Number (s) or Patent Number (s) Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number (s)

Patent Number (s)

09344182

Month Day Year

If this document is being filed together with a **new** Patent Application, enter the date the patent application was signed by the first named executing inventor.

Patent Cooperation Treaty (PCT)

Enter PCT application number only if a PCT _____ PCT _____ PCT _____
U.S. Application Number has not been assigned. PCT _____ PCT _____ PCT _____

Number of Properties

Enter the total number of properties involved. # 1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ 40.00

Method of Payment: Enclosed Deposit Account


(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: # 02-2666

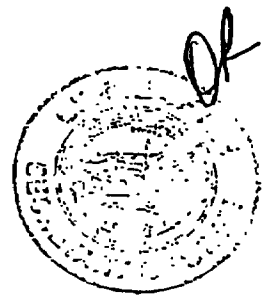
Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Jordan M. Becker 39,602  5/9/01
Name of Person Signing Registration No. Signature Date

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

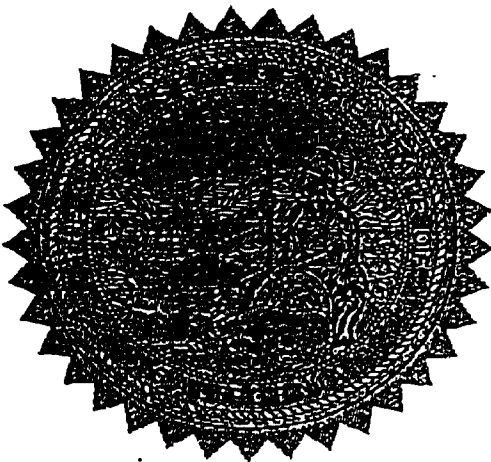
That the attached transcript of 13 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAR 21 2000

Bill Jones

Secretary of State



AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
CLARITY SYSTEMS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 16 2000

BILL JONES, Secretary of State

Indra Mohan hereby certifies that:

1. He is the duly elected and acting President and Chief Financial Officer of Clarity Systems, a California corporation (the "Corporation").
- * 2. The Articles of Incorporation of the Corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of the corporation is Alakai Technologies, Inc.

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The Corporation is authorized to issue two classes of stock to be designated "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that the Corporation is authorized to issue is 12,500,000 shares, no par value per share. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 6,382,639 shares, no par value per share.

The Preferred Stock shall be divided into three series. The first series of Preferred Stock shall be comprised of two million five hundred thousand (2,500,000) shares and shall be designated "Series A Preferred Stock." The second series of Preferred Stock shall be comprised of five hundred ninety-three thousand one hundred sixty five (593,165) shares and shall be designated "Series B Preferred Stock." The third series of Preferred Stock shall be comprised of three million two hundred eighty-nine thousand four hundred seventy-four (3,289,474) shares and shall be designated "Series C Preferred Stock." As used herein, the term "Series A Preferred", "Series B Preferred" and "Series C Preferred" without designation shall refer to shares of the Corporation's Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, respectively, the term "Common" shall refer to the Corporation's Common Stock and the term "Preferred" shall refer to the Corporation's Preferred Stock.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common and the Preferred are as follows:

1. Dividends. The holders of the then outstanding Series A Preferred, the holders of outstanding Series B Preferred and the holders of outstanding Series C Preferred shall be entitled to receive, on a pari passu basis, when and as declared by the Board of Directors, out of funds legally available therefor, noncumulative dividends at the rate of \$0.004 and \$0.06, and \$0.114 respectively, as adjusted for any consolidations, combinations, stock distributions, stock dividends, stock splits or similar events (each a "Recapitalization Event") per share per annum. No dividend may be declared or paid on any shares of Common unless at the same time an equivalent dividend is declared and paid simultaneously on the Series A Preferred, Series B Preferred and Series C Preferred with the dividends paid on each share of Series A Preferred, Series B Preferred and Series C Preferred to be on an as-converted basis. The right to dividends on shares of the Common, Series A Preferred, Series B Preferred and Series C Preferred shall not be cumulative, and no right shall accrue to holders of Common, Series A Preferred, Series B Preferred or Series C Preferred by reason of the fact that dividends on said shares are not declared in any period.

2. Liquidation Preference.

(a) Preference. In the event of the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made first, prior and in preference to the holders of Common of the Corporation, to the holders of Series A Preferred, Series B Preferred and Series C Preferred, on a pari passu basis, in an amount equal to \$0.08 per share of Series A Preferred, \$1.20 per share of Series B Preferred and \$2.28 per share of Series C Preferred (as adjusted for Recapitalization Events) plus an amount equal to all declared but unpaid dividends with respect thereto. If upon the occurrence of such event, the assets and funds available for distribution are insufficient to permit the payment to the holders of Series A Preferred, Series B Preferred and Series C Preferred of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to shareholders will be distributed among the holders of the Series A Preferred, Series B Preferred and Series C Preferred ratably in proportion to the full preferential amount which they would be entitled to receive pursuant to the preceding sentence of this Section 2(a).

(b) After payment has been made to the holders of Series A Preferred, Series B Preferred and Series C Preferred pursuant to Section 2(a), the holders of Common, Series A Preferred, Series B Preferred and Series C Preferred shall be entitled to receive, pro rata, the remaining assets of the Corporation available for distribution to shareholders, based on the number of shares then held by them (assuming full conversion of all such Preferred); provided however that at such time as the distribution of liquidation preference to the holders of: (i) Series A Preferred pursuant to this Section 2(b) shall equal \$0.16, such holders of Series A Preferred shall not be entitled to any further distribution pursuant to this Section 2(b) with respect to shares of Series A Preferred; (ii) Series B Preferred pursuant to this Section 2(b) shall equal \$2.40, such holders of Series B Preferred shall not be entitled to any further distribution pursuant to this Section 2(b) with respect to shares of Series B Preferred; and (iii) Series C Preferred pursuant to this Section 2(b) shall equal \$4.56, such holders of Series C Preferred shall not be entitled to any further distribution pursuant to this Section 2(b) with respect to shares of Series C Preferred. Thereafter, the holders of Common shall be entitled to receive, pro rata, the remaining assets of the Corporation available for distribution to shareholders, based on the

number of shares then held by them. Upon the closing of an equity financing where the pre-money valuation of the Company is Thirty Million Dollars (\$30,000,000) or more the participation rights under this section 2(b) shall be reduced in amount by fifty percent.

(c) Reorganization or Merger. Either of (x) a merger or consolidation of the Corporation with or into any other entity or entities, unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold more than 50% of the voting power of the surviving or acquiring entity, (y) a sale of all or substantially all of the assets of the Corporation or (z) a transaction or series of transactions where the Corporation's shareholders of record as constituted immediately prior to such transaction or series of transactions will, immediately after such transaction or series of transactions, not hold more than 50% of the voting power of the Corporation (each a "Corporate Sale") shall be deemed to be a liquidation within the meaning of this Section 2. Any securities to be delivered to the holders of the Series A Preferred, Series B Preferred and Series C Preferred and Common upon a Corporate Sale shall be valued as follows:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices or sale prices (whichever are applicable) over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a majority of the outstanding shares of Preferred (excluding shares of Series A Preferred), provided that if the Corporation and the holders of a majority of the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the Corporation, which investment banker is acceptable to the holders of a majority of the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred, voting together as a class.

(d) Noncash Distributions. Except as otherwise provided in subsection 2(c) above, if any of the assets of the Corporation are to be distributed other than in cash under this Section 2 or for any purpose, then the Board of Directors of the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of Series A Preferred, Series B Preferred, Series C Preferred or Common. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of Series A Preferred, Series B Preferred and Series C Preferred or Common of the appraiser's valuation.

(e) Consent for Certain Repurchases. Each holder of an outstanding share of Series A Preferred, Series B Preferred or Series C Preferred shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the General Corporation Law, to distributions made by the Corporation in connection with the repurchase of shares of Common issued to or held by

directors, employees or consultants upon termination of their employment or services or in connection with the exercise by the Corporation of contractual rights of first refusal or first offer pursuant to agreements providing for the right of said repurchase between the Corporation and such persons, provided that the terms of such repurchase shall have been approved by the Board of Directors.

3. Voting Rights. The holder of each share of Series A Preferred, Series B Preferred or Series C Preferred shall be entitled to the number of votes equal to the number of shares of Common into which each share of Series A Preferred Series B Preferred or Series C Preferred could be converted on the record date for the vote or written consent of shareholders and, except as otherwise required by law or as set forth herein, shall have voting rights and powers equal to the voting rights and powers of the Common. The holder of each share of Series A Preferred, Series B Preferred, or Series C Preferred shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common at any annual or special meeting of shareholders of the Corporation, or by written consent, upon the election of directors and upon any other matter submitted to a vote of shareholders, except those matters specified herein or required by law to be submitted to a class vote. Fractional votes shall not, however, be permitted and any fractional shares resulting from the above formula (after aggregating all shares of Common into which shares of Series A Preferred, Series B Preferred or Series C Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one).

4. -- Conversion. The holders of the Series A Preferred, Series B Preferred and Series C Preferred shall have conversion rights as follows (the "Conversion Rights"): "

(a) Right to Convert. Each share of Series A Preferred, Series B Preferred or Series C Preferred shall be convertible without the payment of any additional consideration by the holder thereof and, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred. Each share of Series A Preferred shall be convertible at the initial conversion rate determined by dividing \$.08 by the Series A Conversion Price (determined as provided herein) in effect at the time of conversion. The number of shares of Common into which each share of Series A Preferred may be converted is hereinafter referred to as the "Series A Conversion Rate" of the Series A Preferred. The conversion price per share (the "Series A Conversion Price") at which shares of Common shall be initially issuable upon conversion of any shares of Series A Preferred Stock shall be \$.08 and the initial Series A Conversion Rate shall be one-to-one. Each share of Series B Preferred shall be convertible at the initial conversion rate determined by dividing \$1.20 by the Series B Conversion Price (determined as provided herein) in effect at the time of conversion. The number of shares of Common into which each share of Series B Preferred may be converted is hereinafter referred to as the "Series B Conversion Rate" of the Series B Preferred. The conversion price per share (the "Series B Conversion Price") at which shares of Common shall be initially issuable upon conversion of any shares of Series B Preferred Stock shall be \$1.20 and the initial Series B Conversion Rate shall be one-to-one. Each share of Series C Preferred shall be convertible at the initial conversion rate determined by dividing \$2.28 by the Series C Conversion Price (determined as provided herein) in effect at the time of conversion. The number of shares of Common into which each share of Series C Preferred may be converted is hereinafter referred to as the "Series C Conversion Rate" of the Series C

Preferred. The conversion price per share (the "Series C Conversion Price") at which shares of Common shall be initially issuable upon conversion of any shares of Series C Preferred Stock shall be \$2.28 and the initial Series C Conversion Rate shall be one-to-one.

(b) Automatic Conversion. Each share of Series A Preferred, Series B Preferred and Series C Preferred shall automatically be converted into shares of Common at its then effective Conversion Rate with the consent of the holders of more than two thirds of the outstanding Series A Preferred, Series B Preferred and Series C Preferred, voting together as a class. Each share of Series C Preferred shall automatically be converted into shares of Common at its then effective Conversion Rate immediately upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "Securities Act") covering the offer and sale of Common (other than a registration on Form S-8, Form S-4 or comparable or successor forms), at a per share offering price of at least \$4.56 and aggregate gross proceeds (prior to underwriters' commissions and expenses) to the Corporation of more than \$20,000,000 (as appropriately adjusted for a Recapitalization Event). Each share of Series A Preferred and Series B Preferred shall automatically be converted into shares of Common at its then effective Conversion Rate immediately upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "Securities Act") covering the offer and sale of Common (other than a registration on Form S-8, Form S-4 or comparable or successor forms), with aggregate gross proceeds (prior to underwriters' commissions and expenses) to the Corporation of more than \$7,500,000 (as appropriately adjusted for a Recapitalization Event).

(c) Adjustments to Conversion Price of Preferred.

(i) Special Definitions. For purposes of this Section 4(c), the following definitions shall apply:

(A) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common or Convertible Securities.

(B) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common.

(C) "Additional Shares of Common" shall mean all shares of Common issued (or, pursuant to Section 4(c)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date (as defined below), other than shares of Common issued or issuable:

(I) upon conversion of shares of Series A Preferred, Series B Preferred and Series C Preferred;

(II) up to 1,750,000 shares to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purchase plan or other employee stock incentive program or agreement approved by the Board or such greater amount as unanimously approved by the Board of Directors;

(III) in connection with the acquisition by the Corporation of another business entity or majority ownership thereof;

(IV) in an amount up to 200,000 shares of Common (as adjusted for Recapitalization Events), in connection with any lease financing transaction approved by the Board of Directors;

(V) as a dividend or distribution on the Common, Series A Preferred, Series B Preferred or Series C Preferred pursuant to Section 1 hereof;

(VI) in connection with strategic investment and/or the acquisition of technology unanimously approved by the Board of Directors.

(D) "Original Issue Date" shall mean the date on which Series C Preferred are first issued.

(ii) No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price, as applicable, in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issuance of Additional Shares of Common.

(A) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such Options and conversion or exchange of such Convertible Securities shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(c)(iv)(hereof) of such Additional Shares of Common would be less than the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:

(I) except as provided in Section 4(c)(iii)(A)(II) below, no further adjustment in the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(II) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), a Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

(III) no readjustment pursuant to clause (II) above shall have the effect of increasing the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price to an amount which exceeds the lower of (1) the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price on the original adjustment date or (2) the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date.

(B) Stock Dividends and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common payable in Common, or effect a split or subdivision of the outstanding shares of Common into a greater number of shares of Common (by reclassification or otherwise than by payment of a dividend in Common), then and in any such event, then any Additional Shares of Common, if any, shall be deemed to have been issued:

(I) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend, or

(II) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

(iv) Adjustment of Series A Conversion Price, Series B Conversion Price and Series C Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(c)(iii)) without consideration or for a consideration per share less than the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price in effect on the date of and immediately prior to such issue (such issuance price being referred to herein as the "Dilution Price"), then and in each such event the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, as applicable, shall be reduced to a price (calculated to the nearest cent) determined by multiplying such Series A Conversion Price, Series B Conversion Price or Series C Conversion Price by a fraction (x) the numerator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue, plus (2) the number of shares of Common which the aggregate consideration received by the corporation for the total number of additional Shares of Common so issued would purchase at the Series A Conversion Price, Series B Conversion Price or

Series C Conversion Price, and (y) the denominator of which shall be (1) the number of shares of Common outstanding immediately prior to such issue plus (2) the number of such Additional Shares of Common so issued, provided that for the purposes of this subsection 4(c)(iv), all shares of Common issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities, as the case may be, shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to subsection 4(c)(iii) above, such Additional Shares of Common shall be deemed to be outstanding, and provided further that the Conversion Price shall not be reduced at such time if the amount of such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

(v) Determination of Consideration. For purposes of this Section 4(c), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation;

(II) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(III) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(c), relating to Options and Convertible Securities, shall be determined by dividing.

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common (as set forth in the instruments relating thereto, without regard to any provision contained therein for a

subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(C) Stock Dividends and Stock Subdivisions. Any Additional Shares of Common deemed to have been issued, relating to stock dividends and stock splits or subdivisions, shall be deemed to have been issued for no consideration.

(vi) Other Adjustments to Series A Conversion Price, Series B Conversion Price and Series C Conversion Price.

(A) Subdivisions, Combinations, or Consolidations of Common. In the event the outstanding shares of Common shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common after the Original Issue Date, the Series A Conversion Price, Series B Conversion Price and Series C Conversion Price in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(B) Reclassifications. In the case, at any time after the date hereof, of any capital reorganization (except as provided in Section 2(c)) or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the shares of the Series A Preferred, Series B Preferred and Series C Preferred shall, after such reorganization or reclassification, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization or reclassification, the holder had converted the holder's shares of the Series A Preferred, Series B Preferred or Series C Preferred into Common. The provisions of this Section 4(c)(vi)(B) shall similarly apply to successive reorganizations, reclassifications or consolidations.

(d) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, Series B Conversion Price, or Series C Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred, Series B Preferred or Series C Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, Series B Preferred or Series C Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price of the Series A Preferred, Series B Preferred or Series C Preferred at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

(e) Mechanics of Conversion. Before any holder of Series A Preferred, Series B Preferred or Series C Preferred shall be entitled to convert the same into shares of Common,

such holder shall surrender the certificate or certificates therefor, duly endorsed, or a signed statement in form reasonably acceptable to the Corporation to the effect that the certificates have been lost or destroyed at the office of the Corporation or of any transfer agent for the Series A Preferred and Series B Preferred and Series C Preferred and shall give written notice to the Corporation at such office that the holder elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to subsection 4(b) hereof). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred, Series B Preferred or Series C Preferred a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred, Series B Preferred or Series C Preferred to be converted (except that in the case of an automatic conversion pursuant to subsection 4(b) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in subsection 4(b) and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(f) Fractional Shares. In lieu of any fractional shares to which the holder of Preferred would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common as determined by the Board of Directors of the Corporation. The number of whole shares issuable to each holder upon such conversion shall be determined on the basis of the number of shares of Common issuable upon conversion of the total number of shares of Series A Preferred, Series B Preferred or Series C Preferred of each holder at the time converting into Common.

(g) No Impairment. The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred, Series B Preferred and Series C Preferred against impairment.

(h) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common solely for the purpose of effecting the conversion of the shares of Preferred such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred; and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(i) No Reissuance of Converted Shares. No shares of Series A Preferred, Series B Preferred or Series C Preferred which have been converted into Common after the

original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion cease to be a part of the authorized shares of the Corporation.

(j) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, the Corporation shall mail to each holder of Series A Preferred, Series B Preferred and Series C Preferred at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

5. Protective Provisions.

(a) In addition to any other rights provided by law, so long as any Series C Preferred shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the outstanding shares of Series C Preferred, voting as a single class:

(i) amend or repeal any provision of, or add any provision to, this Corporation's Amended and Restated Articles of Incorporation or bylaws if such action would adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Preferred, or increase or decrease the number of shares of Preferred, or of any series thereof, authorized hereby;

(ii) reclassify the Series C Preferred or authorize, create or issue shares of any class of stock having rights, preferences, privileges or powers superior to or on parity with those of the Series C Preferred.

(b) Also, in addition to any other rights provided by law, so long as any Preferred shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than two thirds of the outstanding shares of Series A Preferred, Series B Preferred, and Series C Preferred, voting together as a single class:

(i) pay a dividend on any shares of capital stock, except as provided in Section 2(a);

(ii) recapitalize, reorganize, or repurchase any Preferred other than pursuant to Section 4;

(iii) increase or decrease the size of the Board of Directors;

(iv) redeem or repurchase any shares of capital stock except as provided in Section 2(e); or

(v) consummate a Corporate Sale;

ARTICLE IV

The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Any repeal or modification of this Article IV, or the adoption of any provision of the Articles of Incorporation inconsistent with this Article IV, shall only be prospective and shall not adversely affect the rights under this Article IV in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

ARTICLE V

This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits on indemnification set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to the Corporation or its shareholders. Any repeal or modification of this Article V, or the adoption of any provision of the Articles of Incorporation inconsistent with this Article V, shall only be prospective and shall not adversely affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to indemnification.

The foregoing Articles of Incorporation have been duly approved by the Board of Directors of the Corporation.

The foregoing Amended and Restated Articles of Incorporation have been duly approved by the required vote of the shareholders of the Corporation in accordance with sections 603 and 903 of the California General Corporations Law. The total number of outstanding shares of the Corporation entitled to vote with respect to the foregoing Amended and Restated Articles of Incorporation was 1,802,812 shares of Common, 2,500,000 shares of Series A Preferred and 593,165 shares of Series B Preferred. The number of shares voting in favor of the amendment equaled or exceeded the vote required such required vote being (i) a majority of the outstanding shares of Common, (ii) a majority of the outstanding shares of Series A Preferred and (ii) a majority of the outstanding shares of Series B Preferred.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Executed this 5th day of March, 2000.



Indra Mohan
President and Chief Financial Officer

